

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BYTEMARK, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 1:17-cv-01803-PGG
	§	Hon. Paul G. Gardephe
XEROX CORP., ACS TRANSPORT	§	
SOLUTIONS, INC., XEROX	§	
TRANSPORT SOLUTIONS, INC.,	§	
CONDUENT INC., and	§	
NEW JERSEY TRANSIT CORP.,	§	
	§	
Defendants.	§	

**DEFENDANTS' NOTICE OF INSTITUTION OF A THIRD PARTY INTER PARTES
REVIEW FOR USPN 8,494,967**

Defendants Xerox Corp, ACS Transport Solutions, Inc, Xerox Transport Solutions Inc., Conduent Inc., and New Jersey Transit Corp. hereby notify the Court that an Inter Partes Review (IPR) of USPN 8,494,967 has been instituted by the U.S. Patent and Trademark Office on December 4, 2017 by a third party (Masabi LTD.). Case IPR2017-01449 decision to institute is attached herewith as **Exhibit A**.

A panel of three USPTO Administrative Law Judges held “Upon considering the Petition, the Preliminary Response, and the evidence filed therewith, we determine that Petitioner has shown a reasonable likelihood that it would prevail with respect to at least 1 of the challenged claims. Accordingly, we institute an inter partes review of claims 1, 3–6, 17, 18, 20–23, and 34.” **Exhibit A**, Decision at p. 2.

The basis of the IPR was whether claims 1, 3–6, 17, 18, 20–23, and 34 of the ‘967 patent were anticipated by prior art references *Terrell*, *Cruz* and *Dutta*. The Board held “Based on our

analysis above of independent claims 1, 17, and 18 in light of Terrell, we determine it is reasonably likely that Petitioner will prevail in establishing that claims 1, 17, and 18 are anticipated by Terrell.” Decision at p. 22, The Board then “ORDERED that pursuant to 35 U.S.C. § 314(a), an inter partes review is hereby instituted based solely on whether claims 1, 3–6, 17, 18, 20–23, and 34 are anticipated by Terrell.” Decision at p. 34.

This development is relevant to Defendant’s Motion to Dismiss pursuant to FED. R. CIV. P. 12(b).

Dated: January 26, 2018

Respectfully submitted,

/s/Douglas P. LaLone

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 26, 2018, Defendant's Notice of Institution of a Third Party Inter Partes Review and accompanied exhibit was served via e-mail on the following counsel of record:

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